IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2990 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KODARBHAI K DARJI

Versus

STATE OF GUJARAT

Appearance:
Ms.Hansa Punani, learned AGP for respondents Nos.1 and 2
Mr.Mayur Rana for
MR RK MISHRA for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/02/2001

ORAL JUDGEMENT

Mr.H.J.Nanavati who was representing the petitioners and whose name has been shown in the board for the petitioners has appeared before this court and

has submitted that his client had taken away papers from him long back. Mr. Nanavati has, therefore, pleaded no instructions.

This Special Civil Application filed by the President of Shri Saraswati Kelvani Mandal, Mevda (Godh), Taluka Malpur, District Sabarkantha and the Principal, Mevda (Godh), Taluka Malpur, District - Sabarkantha is directed against the interim order dated 22.4.1991 passed by the Gujarat Secondary Education Tribunal, Ahmedabad in Application No.564 of 1990 whereby the Tribunal directed the School to allow respondent No.3 herein to join the duty with effect from 23.4.91 subject to the result of the Application and the applicant's salary shall be paid with effect from 23.4.91 and shall be held admissible for the purpose of grant till the time he continues by virtue of the interim order. The learned counsel for the respondent No.3 has stated before us that the main Application i.e. Application No.564/90 is still pending before the Gujarat Secondary Education Tribunal.

The impugned order dated 22.4.91 passed by the Tribunal shows that the respondent No.3, namely, Shri Shivabhai M.Patel approached the Tribunal with the grievance that though he had been selected after proper procedure and that his selection and appointment has been approved by the Department, the School Management did not issue order of appointment and did not allow him to join. It was also the case of the respondent No.3 before the Tribunal that in fact he had been working from 1987 as a part timer and has also been made full timer in the year 1988 and, therefore, his appointment was required to be regularized on the basis of his selection as aforesaid.

The respondent No.3 had produced the orders of District Education Officer dated 7.12.89 and 13.8.90 whereby the School was allowed to issue the order of appointment of the respondent No.3 herein and to allow him to join. On the date of the impugned order dated 22.4.91 representative of the District Education Officer has informed the Tribunal that the respondent No.3 had been interviewed on 25.10.89 and after due procedure of selection, he had been selected at the first rank. It was also informed that the District Education Officer had issued orders dated 7.12.89 and 13.8.90 informing the School that the respondent No.3 had been duly selected and that his selection had been approved by the Department subject to audit.The District Education Officer has also informed the School Management to allow the respondent immediately to join the School and that in case he was not allowed to join, the Department will be

constrained to take appropriate action against the School Management. Yet the stand of the School Management was that it had not received the orders dated 7.12.89 and 13.8.90. The Tribunal also considered the question of qualification held by the respondent No.3 and found that even if the respondent No.3 has Samaj Navnirman at B.Ed., he could be considered qualified for the post of teacher to teach the subject of Samajvidya on B.A. The Tribunal came to the conclusion that prima facie the objection with regard to qualification against respondent No.3 has no substance. It also noted the fact that the respondent No.3 had been working from 1987 and now when his selection has been regularized by the statutorily constituted selection committee, the objection regarding his qualification could not come in his way. The Tribunal noted that the School was without a teacher for about 6 to 7 months, the respondent No.3 was without work and salary for about 6 to 7 months and, therefore, in the interest of justice and subject to the result of the application, the respondent No.3 was allowed to join duties with effect from 23.4.91 and the final hearing of the application was fixed on 6.9.91 with the direction, as above, in favour of the respondent No.3.

The learned counsel for the respondent No.3 has given out that the Application No.564/90 is still pending before the Tribunal and it appears from the order sheet dated 25.4.91 that the interim relief was refused to the present petitioners i.e. President of Shri Saraswati Kelvani Mandal, Mevda (Godh), Taluka Malpur, District - Sabarkantha and Principal, Mevda (Godh), Taluka - Malpur, District - Sabarkantha.

Once respondent No.3 had been selected by a selection committee and his selection and appointment had been approved by District Education Officer and such orders had already been produced before the Education Tribunal, the present petitioners could not prevent the respondent No.3 to enure the benefits of such an appointment only on the flimsy and jejune ground that they had not received the orders passed by the District Education Officer, more particularly when on behalf of the District Education Officer, it was conceded before the Tribunal that the respondent No.3 has been selected, his selection and appointment had been approved by the District Education Officer and the two orders dated 7.12.89 and 13.8.90 had been issued. Even today this factual position has not been disputed by the learned AGP appearing on behalf of the respondents Nos.1 and 2.

This Court does not find any error of fact or law

in the order passed by the Tribunal, which is impugned before this Court in these proceedings. No case whatsoever is made out to interfere with the order, as has been passed by the Education Tribunal. There is no substance in this Special Civil Application. The same is hereby dismissed. Rules is hereby discharged, No order as to costs.

In case the main application of the respondent No.3 is pending before the Education Tribunal and the same has not been decided so far, it may be decided as early as possible.

(M.R.Calla,J)